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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/560,097	04/03/2006	Derek Cornes	70285	1174

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05/02/2008

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EXAMINER

BROOKS, KRISTIE LATRICE

ART UNIT

PAPER NUMBER

1616

MAIL DATE

DELIVERY MODE

05/02/2008

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/560,097

Applicant(s)

CORNES ET AL.

Examiner

KRISTIE L. BROOKS

Art Unit

1616

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 03 April 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-16 and 18 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-16 and 18 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO/CDC)
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date: _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____
- Paper No(s)/Mail Date 12/9/05

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DETAILED ACTION

Status of Application

1. Claims 1-16 and 18 are pending.

Priority

2. Acknowledgment is made of applicant's claim for foreign priority under 35 U.S.C. 119(a)-(d).

Specification

3. The abstract of the disclosure is objected to because it is not descriptive enough of the invention. The abstract should be between 50-150 words in length. Correction is required. See MPEP § 608.01(b).

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.

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2. Ascertaining the differences between the prior art and the claims at issue.
 3. Resolving the level of ordinary skill in the pertinent art.
 4. Considering objective evidence present in the application indicating obviousness or nonobviousness.
5. Claims 1-16 and 18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Crosby et al. (US 6,455,469).

Applicant claims a method for the season-long control of unwanted vegetation, said method comprising a single application of a herbicidal combination comprising a 2-(substituted benzoyl)-1,3-cyclohexanedione or metal chelate thereof, glyphosate or a salt thereof and an acetamide.

Determination of the scope and content of the prior art
(MPEP 2141.01)

Crosby et al. teach a herbicidal composition comprising (A) at least one acetanilide derivative and (B) at least one compound including triketones such as mesotrione and sulcotrione, chloroacetamides such as alachlor, metolachlor, acetochlor, and dimethenamid, oxyacetamides such as flufenacet, and amino acids such as glyphosate (see the abstract, column 2 lines 4-5, 19, 40-44 and 63-65 and Table 2). The compositions exhibit additive or synergistic effects (see column 13 lines 45-46). The compositions may be applied to a target area where suppression of unwanted vegetation is needed (see column 13 lines 45-52 and 66-67). Tables 4 and 5

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disclose weed control of combinations of herbicides 35 and 21 days after application (see column 19, Tables 4 and 5).

**Ascertainment of the difference between the prior art and the claims
(MPEP 2141.02)**

Crosby et al. do not teach an exemplification of the instant combination of 2-(substituted benzoyl)-1,3-cyclohexanedione or metal chelate thereof, glyphosate or a salt thereof and an acetamide being applied to unwanted vegetation.

**Finding of prima facie obviousness
Rational and Motivation (MPEP 2142-2143)**

It would have been obvious to one of ordinary skill in the art at the time the claimed invention was made to apply the instant herbicidal combination of 2-(substituted benzoyl)-1,3-cyclohexanedione or metal chelate thereof, glyphosate or a salt thereof and an acetamide to unwanted vegetation.

One of ordinary skill in the art would have been motivated to do this because Crosby et al. suggests herbicidal compositions comprising 2-(substituted benzoyl)-1,3-cyclohexanedione or metal chelate thereof, glyphosate or a salt thereof and an acetamide. Although Crosby et al. does not exemplify the instant combination being

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applied to unwanted vegetation, it would have been obvious to one of ordinary skill in the art to apply the instant combination to unwanted vegetation since the combinations are taught by Crosby et al. (column 2 lines 4-5, 19, 40-44 and 63-65 and column 13 lines 45-46) to have synergistic and additive effects against unwanted vegetation. Thus, one of ordinary skill would have been motivated to use the instant combination for the purpose of obtaining a herbicidal composition with increased effectiveness against unwanted vegetation. Although Crosby et al. does not specifically teach seasonal control of unwanted vegetation, it is the Examiners position that since the compositions taught by Crosby et al. are shown to be effective 35 days after application and Applicant has not defined the length of time required for seasonal control, the limitation is met. Therefore, the claimed invention would have been *prima facie* obvious to one of ordinary skill in the art at the time the invention was made because the prior art is fairly suggestive of the claimed invention.

Conclusion

6. No claims are allowed.
7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to KRISTIE L. BROOKS whose telephone number is (571)272-9072. The examiner can normally be reached on M-F 8:30am-6:00pm Est..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Johann R. Richter can be reached on (571) 272-0646. The fax phone

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number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

KB

/Johann R. Richter/

Supervisory Patent Examiner, Art Unit 1616